LANDLORD AND TENANT—BREACH OF COVENANT TO WORK OUT ROAD TAX—INTERVENING IMPOSSIBILITY DUE TO CHANGE IN LAW.—The plaintiff leased his farm to the defendant from 1912 to 1917, the lessee undertaking to share the crops and work out the road tax. In 1913 a statute was enacted which required all road taxes to be paid in cash. The plaintiff, following the defendant's refusal, paid the road taxes for the four remaining years of the term. In an action by the plaintiff on the written lease, it was *held,* that the amount paid was recoverable in the form of damages for breach of contract, notwithstanding the intervening impossibility raised by the statute. *Mascall* v. *Reitmeier* (Minn., 1920), 176 N. W. 486.

It is the generally accepted rule that impossibility created by subsequent legal enactment will excuse performance, and, in the case of executory contracts, will, in effect, wholly discharge the parties from their agreement. 3 PAGE, CONTRACTS, 2127; *Cordes* v. *Miller,* 39 Mich. 581. But the same author points out that impossibility is not to be considered as the equivalent of performance, where the consideration on one side has ben wholly executed, and performance on the other side has been rendered impossible. 3 PAGE, CONTRACTS, 2115. The problem, presented by the principal case, does not involve so much the right as it does the remedy. The decision allows the plaintiff to recover damages for the defendant's refusal to perform what he had not agreed to do. But, in accord with the decision in the principal case, damages were allowed for a tenant's failure to perform his covenant to erect a frame dwelling after a statute had prohibited the erection of frame buildings in the district. *Rooks* v. *Seaton,* 1 Phila. 106. If the facts of the principal case presented a possibility of obtaining specific performance, a more proper remedy would seem to be a bill in equity for specific performance or damages in the alternative. See *Louisville & Nashville Ry. Co.* v. *Crowe,* 156 Ky. 27, where compensation was awarded in lieu of an annual pass, the issuance of which the HEPBURN ACT had rendered illegal; and *German Society* v. *Philadelphia,* 9 Phila. 245, where the lessee was ordered to pay the equivalent of a tax to the lessor in compliance with his covenant to discharge all taxes, after the property had been exempted from taxation. Or, perhaps, a recovery might be had in quasi contract on the theory that there had been a failure of consideration. *Strickland* v. *Turner,* 7 Ex. 206; *Briggs* v. *Vanderbilt,* 19 Barb. 222. But the fact that the unperformed part of the consideration was not apportionable might raise an obstruction to such relief. WOODWARD, QUASI CONTRACTS, 204. It might be well to consider, in connection with the principal case, that where the law renders impossible the performance of the lessor's covenant for quiet enjoyment the tenant is not allowed to recover damages in an action for breach of the covenant. *Baily* v. *De Crespigny,* L. R. 4 Q. B. 180; *Ellis* v. *Welch,* 6 Mass. 246. In this respect, the remedies of landlord and tenant, as against each other, do not appear to be reciprocal. A Pennsylvania county court decision allowed the lessor to rescind the lease and bring ejectment where a statute rendered the tenant's performance impossible. *Rooks* v. *Seaton, supra.* If this authority is to be relied on, there

might be reason in refusing all relief whatever to the present plaintiff, allowing him to rest on his neglected remedy. At all events, perhaps it may be said of the principal case that "the end justifies the means."

LANDLORD AND TENANT—HOLDING OVER AFTER TERM NOT RENEWAL OR EXTENSION OF LEASE.—Lease contained a covenant that if the lease were extended or renewed the lessee would reimburse the lessor for improvements made during the term. The lessee held over and the lessor elected to consider him a tenant from year to year and lessor sued to recover for improvements made. *Held,* holding over does not operate as an extension or renewal within the meaning of the lease. *Edward Hines Lumber Co.* v. *The American Car and Foundry Co.* (C. C. A., 7th Circ., 1919), 262 Fed. 757.

The court based its decision, partly at least, upon technical definitions of renewal and extension, and maintained that a holding over is not a renewal, for the word renewal implies the execution of a new lease. This view of a renewal is supported in *Leavitt* v. *Maykel,* 203 Mass. 506. But in *Raulet* v. *Cook,* 44 N. H. 512, it was decided that a renewal clause does not require the execution of a new lease, and in *The Insurance Co.* v. *The National Bank of Missouri,* 71 Mo. 60, the court doubted whether any distinction could be drawn between renewal and extension clauses and that neither required a new lease be executed. Still another position was taken in *Kollock* v. *Scribner,* 98 Wis. 104, where both extension and renewal clauses were regarded as contemplating the execution of a new lease. In the principal case the court further distinguishes a holding over from an extension on the ground that an extension in the absence of express stipulation involves a continuation of the tenancy for the same term. *Kollock* v. *Scribner, supra.* The second ground assigned by the court seems much more satisfactory and is based on more widely recognized rules of law. The terms renewal and extension imply a continuation of the relation springing out of express contract, while a holding over and the resulting tenancy from year to year has as its foundation not an express contract, since a notice by the tenant to the landlord will not prevent the creation of the tenancy, but has variously been described as a relation created by operation of law, *Mason* v. *Wierenga's Estate,* 113 Mich. 151, or by an implied condition of the lease. *Herter* v. *Mullen,* 159 N. Y. 28. The writer has been unable to find any case deciding the express point in issue. In *Right d. Flower* v. *Darby,* 1 Term Rep. 159, Lord Mansfield speaks of a holding over and the resulting tenancy as a "renovation" and a renewal of the agreement, and in *The Clinton Wire Cloth Co.* v. *Gardner,* 99 Ill. 151, the court says that by holding over there is a presumption of a renewal of the tenancy. However, these *dicta* were in no measure necessary or important to the decision and should hardly be regarded as controlling.

LANDLORD AND TENANT—TENANT DRAFTED—LIABILITY FOR RENT.—Defendant, being lessee of premises, was compelled to abandon same before the expiration of the term by reason of his being drafted and inducted into the United States Army. Plaintiff, the lessor, thereupon relet the premises for